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WAL-MART STORES, INC.

17 UNITED STATES DISTRICT COURT  
18 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
19

20 ULTIMATE BRAND  
MANAGEMENT, LLC, a Delaware  
21 limited liability company,

22 Plaintiff,

23 v.

24 WAL-MART STORES, INC., a  
Delaware corporation; and DOES 1-10,

25 Defendants.  
26

Case No. 2:15-cv-10001 BRO (AJWx)

**STIPULATED PROTECTIVE  
ORDER**

1 WHEREAS, Plaintiff Ultimate Brand Management, LLC (“UBM”) and  
2 Defendant Wal-Mart Stores, Inc. (“Walmart”) believe that certain information that is  
3 or may be sought by discovery requests in this action constitutes trade secrets or  
4 other confidential research, development or commercial information within the  
5 meaning of FED. R. CIV. P. 26(c), including without limitation, financial  
6 information, customer information, business and marketing plans, manufacturing  
7 documents, and sales and marketing documents; and

8 WHEREAS, UBM and Walmart believe that it would facilitate  
9 discovery to produce such information under a protective order pursuant to FED. R.  
10 CIV. P. 26(c);

11 WHEREAS, in light of the parties’ agreement on all terms of this  
12 Protective Order, UBM and Walmart believe that entry of the Protective Order as  
13 agreed upon would facilitate discovery.

14 NOW, THEREFORE, this Protective Order is entered pursuant to  
15 stipulation of the parties:

16 **STIPULATED PROTECTIVE ORDER**

17 1. This Stipulated Protective Order shall govern the disclosure of  
18 materials designated as Confidential Material during the course of discovery.  
19 Confidential Material, as used in this Order, shall refer to any document, item, or  
20 information designated as Confidential or Attorneys’ Eyes Only, including but not  
21 limited to, documents, items, or information produced during discovery, and all  
22 copies thereof.

23 2. Confidential Material, as used in this Order, consists of the following  
24 materials and categories of materials:

- 25 a. Materials relating to any non-public confidential, privileged or  
26 proprietary technical, scientific, commercial, business or financial  
27 information, including, but not limited to, trade secrets, research,  
28 design, development, marketing, planning, personnel, or commercial

1 information, as such terms are used in the Federal Rules of Civil  
2 Procedure and any applicable case law interpreting Rule 26(c)(1)(G) or  
3 the former Rule 26(c)(7), contracts; vendor agreements; claim/litigation  
4 information; or certain policies and procedures.

5 b. Materials containing highly confidential and sensitive non-public  
6 technical, scientific, commercial, business, or financial information,  
7 including corporate trade secrets, research and development data,  
8 pricing formulas, inventory management programs, and customer-  
9 related Protected Data are considered Highly Confidential Material and  
10 shall be deemed “ATTORNEYS’ EYES ONLY –SUBJECT TO  
11 PROTECTIVE ORDER.” Qualified recipients of materials marked  
12 “ATTORNEYS’ EYES ONLY –SUBJECT TO PROTECTIVE  
13 ORDER” shall include only those individuals identified in Paragraph 7.

14 c. Protected Data shall refer to any information that a party believes  
15 in good faith to be subject to federal, state or foreign data protection  
16 laws or other privacy obligations. Examples of such data protection  
17 laws include but are not limited to The Gramm-Leach-Bliley Act, 15  
18 U.S.C. § 6801 et seq. (financial information); and, The Health  
19 Insurance Portability and Accountability Act and the regulations  
20 thereunder, 45 CFR Part 160 and Subparts A and E of Part 164  
21 (medical information). Certain Protected Data may compel alternative  
22 or additional protections beyond those afforded Highly Confidential  
23 Material, in which event the parties shall meet and confer in good faith,  
24 and, if unsuccessful, shall move the Court for appropriate relief.

25 d. Any party or nonparty responding to discovery in this action  
26 shall have the right to designate any document, testimony, or other  
27 information or material as either CONFIDENTIAL or ATTORNEYS’  
28 EYES ONLY, if the party has a good-faith belief that the material

1 satisfies the definitions of CONFIDENTIAL or ATTORNEYS' EYES  
2 ONLY herein.

3 e. A party that disputes a confidentiality designation hereunder  
4 shall challenge such designation within a reasonable time after the  
5 materials are so designated, pursuant to the procedures of Local Rules  
6 37-1 through 37-4. If the dispute cannot be resolved, the receiving  
7 party may apply to the Court for a ruling regarding the designated  
8 material, in which case the burden of proving that material has been  
9 properly designated shall be on the designating party. Pending such  
10 application and ruling, the receiving party shall treat such material as  
11 CONFIDENTIAL or ATTORNEYS' EYE ONLY material under this  
12 PROTECTIVE ORDER.

13 3. If any party seeks to designate additional documents or information  
14 produced by another party or non-party as Confidential Material, it will be the  
15 burden of the party seeking protected status to move for a Court Order designating  
16 the materials as confidential after the parties confer.

17 4. The parties agree that Confidential Material as described in paragraph 2  
18 should be given the protection of an order of this Court to prevent injury through  
19 disclosure to persons other than those persons involved in the prosecution or defense  
20 of this litigation.

21 5. To designate information as Confidential Material, the designating  
22 party shall mark Confidential Material with the legend "CONFIDENTIAL –  
23 SUBJECT TO PROTECTIVE ORDER" or "ATTORNEYS' EYES ONLY –  
24 SUBJECT TO PROTECTIVE ORDER" and shall submit confidential discovery,  
25 such as answers to interrogatories or requests for admissions, in a separate document  
26 stamped with the appropriate legend. The receiving party may make copies of  
27 Confidential Material and such copies shall become subject to the same protections  
28 as the Confidential Material from which those copies were made.

1           a.       Information on a disk or other electronic format may be  
2           designated confidential by marking the storage medium itself with the  
3           legend “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER”  
4           or “ATTORNEYS’ EYES ONLY – SUBJECT TO PROTECTIVE  
5           ORDER.” However, any images, files or other electronically stored  
6           information contained within the designated storage medium, e.g., disk,  
7           DVD, thumb or flash drive, etc., that are capable of being reproduced  
8           by making a hard-copy printout of such image, file or electronically  
9           stored information shall also be designated with the desired  
10          confidentiality legend so that any hard-copy printouts made by the  
11          receiving party shall bear the confidential designation intended to be  
12          made by the designating party. The receiving party shall mark any  
13          permissible copies of the designated storage medium itself, e.g., disk,  
14          DVD, thumb or flash drive, etc., with the corresponding legend  
15          contained on the original and such copies shall become subject to the  
16          same protections, as the Confidential Material from which those copies  
17          were made.

18          b.       Information disclosed at any deposition of a party or nonparty in  
19          this action may be designated by any party as confidential by indicating  
20          on the record at the deposition that the information is confidential and  
21          subject to the provisions of this Order. Alternatively, the designating  
22          party may designate information disclosed at the deposition as  
23          confidential by notifying the court reporter and other parties in writing,  
24          within 15 business days of receipt of the transcript, of the specific  
25          pages and lines of the transcript that are being designated as  
26          confidential. The parties may agree to a reasonable extension of the 15  
27          business day period for designation. Designations of transcripts will  
28          apply to audio, video, or other recordings of the testimony. During

1 such 15 business day period, and any reasonable extensions thereof  
2 agreed upon by the parties, the entire transcript shall receive  
3 confidential treatment. Upon such designation, the court reporter and  
4 each party shall affix the “CONFIDENTIAL – SUBJECT TO  
5 PROTECTIVE ORDER” or “ATTORNEYS’ EYES ONLY –  
6 SUBJECT TO PROTECTIVE ORDER” legend to the designated pages  
7 and segregate them as appropriate.

8 c. Copies of Confidential Material described in paragraph 2 above,  
9 or incorporated into paragraph 2 by Court Order, and which were  
10 produced without the designation of “CONFIDENTIAL –SUBJECT  
11 TO PROTECTIVE ORDER” or “ATTORNEYS’ EYES ONLY –  
12 SUBJECT TO PROTECTIVE ORDER” may be so designated later if  
13 the designating party failed to make such designation at the time of  
14 production through inadvertence or error. If such information has been  
15 disclosed to persons not qualified to receive such information pursuant  
16 to paragraph 7 below, the party who disclosed such information shall  
17 take reasonable efforts to retrieve previously disclosed Confidential  
18 Material and advise such persons that the material is Confidential and  
19 must be returned.

20 6. Pursuant to Federal Rule of Evidence 502(d), disclosure (including  
21 production) of information that a party or non-party later claims should not have  
22 been disclosed because of a privilege, including, but not limited to, the attorney-  
23 client privilege or work product doctrine (“Privileged Information”), shall not  
24 constitute a waiver of, or estoppel to, any claim of attorney-client privilege, attorney  
25 work product, or other ground for withholding production as to which the producing  
26 party would be entitled in the Litigation or any other federal or state proceeding.  
27 Pursuant to Federal Rule of Civil Procedure 26(b)(5)(B) and Federal Rule of  
28 Evidence 502(e), the receiving party hereby agrees to return, sequester, or destroy

1 any Privileged Information disclosed or produced by the producing party upon  
 2 request. If the receiving party reasonably believes that Privileged Information has  
 3 been inadvertently disclosed or produced to it, it shall promptly notify the producing  
 4 party and sequester such information until instructions as to disposition are received.  
 5 The failure of any party to provide notice or instructions under this Paragraph shall  
 6 not constitute a waiver of, or estoppel to, any claim of attorney-client privilege,  
 7 attorney work product, or other ground for withholding production as to which the  
 8 producing party would be entitled in the Litigation or any other federal or state  
 9 proceeding. This provision is designed to foreclose any arguments by the receiving  
 10 party that the production of Confidential Materials subject to a legally recognized  
 11 claim of privilege, including without limitation the attorney-client privilege, work-  
 12 product doctrine, or other applicable privilege:

- 13 a. was not inadvertent by the producing party;
- 14 b. that the producing party did not take reasonable steps to prevent
- 15 the disclosure of privileged Documents;
- 16 c. that the producing party did not take reasonable or timely steps
- 17 to rectify such Disclosure; and/or
- 18 d. that such Disclosure acts as a waiver of applicable privileges or
- 19 protections associated with such Documents.

20 7. Any Confidential Material designated as “ATTORNEYS’ EYES  
 21 ONLY – SUBJECT TO PROTECTIVE ORDER” and the information contained  
 22 therein shall be disclosed only to the following: (a) the Court, its staff, and counsel,  
 23 including research attorneys; (b) outside counsel for the parties and their personnel;  
 24 and (c) vendors retained by or for the parties to assist in preparing for pretrial  
 25 discovery (including employees, of any firm retained to produce the discovery  
 26 material for use in accordance with this Protective Order), litigation, trial, and/or  
 27 hearings including, but not limited to, court reporters, videographers, litigation  
 28 support personnel, jury consultants, individuals preparing demonstratives and



1 audiovisual aids for use in the courtroom, depositions, or mock jury sessions,  
2 provided that they, as well as their staff and clerical employees whose duties and  
3 responsibilities require access to such materials, have signed the Affidavit attached  
4 hereto as Exhibit A; and (d) consulting and testifying experts. Additionally, outside  
5 counsel for a receiving party may prepare and provide to in-house counsel a  
6 summary of any Confidential Material designated as “ATTORNEYS’ EYES ONLY  
7 – SUBJECT TO PROTECTIVE ORDER,” on an as-needed basis. Confidential  
8 Material shall not be disclosed to any outside experts or consultants who are current  
9 employees of a direct competitor of any party named in the Litigation. Counsel  
10 shall advise all persons to whom Confidential Material is disclosed pursuant to this  
11 Order of the existence of this Order, and shall provide all such persons (other than  
12 the Court and its staff) with a copy of this Order. Counsel also shall require all  
13 persons, except the Court, its staff, outside counsel of record and such counsel’s  
14 staff personnel, to execute the Affidavit attached as *Exhibit A*, prior to the disclosure  
15 of Confidential Material.

16 8. Any Confidential Material designated as “CONFIDENTIAL –  
17 SUBJECT TO PROTECTIVE ORDER” and the information contained therein shall  
18 be disclosed only to the following: (a) those individuals identified in Paragraph 7;  
19 (b) in-house counsel for the parties; (c) the principals, officers, and directors of the  
20 parties; (d) employees of a party to whom disclosure is necessary in connection with  
21 the preparation for and trial of this action; and (e) any witnesses in the case as may  
22 from time to time reasonably be necessary in prosecution or defense of this action.

23 9. It shall be the obligation of counsel, upon learning of any breach or  
24 threatened breach of this Stipulated Protective Order, to promptly notify counsel for  
25 the designating party of such breach or threatened breach. Counsel shall not  
26 otherwise offer and take reasonable efforts to prevent disclosure of any Confidential  
27 Material, its contents, or any portion or summary thereof. Disputes concerning the  
28



1 confidential nature of such materials shall be resolved by the Court upon motion  
2 prior to dissemination of any Confidential Material.

3 10. Persons having knowledge of Confidential Material and information  
4 solely by virtue of their participation in the conduct of this litigation shall use them  
5 for that purpose only and only as permitted herein, and shall not disclose such  
6 Confidential Material, their contents or any portion or summary thereof to any  
7 person(s) not involved in the conduct of this litigation. If any person having access  
8 to the Confidential Material herein shall violate this Order, he/she may be subject to  
9 sanctions by the Court.

10 11. The provisions of this Stipulated Protective Order shall not affect, and  
11 this Order does not limit, the use or admissibility of Confidential Material (or  
12 references to that material) as evidence at trial, or during a hearing or similar  
13 proceeding in this action or as part of the record on appeal, provided that either party  
14 may seek an appropriate Court Order to protect Confidential Material.

15 12. Nothing in this Stipulated Protective Order shall be deemed to preclude  
16 any party or interested member of the public from seeking and obtaining, on an  
17 appropriate showing, a modification of this Order including additional protection  
18 with respect to confidentiality of material or the removal of a confidential  
19 designation. Should counsel or an interested member of the public disagree with any  
20 designation of material as confidential, he or she first shall attempt to resolve such  
21 dispute with the parties' counsel and, if unsuccessful, apply to the Court for a  
22 determination as to whether the material or information should remain designated as  
23 Confidential Material. Pending resolution of any challenges, the material at issue  
24 shall continue to be treated as Confidential Material until ordered otherwise by the  
25 Court.

26 13. The restrictions set forth in any of the preceding paragraphs shall not  
27 apply to information or material that was, is or becomes public knowledge in a  
28 manner other than by violation of this Order.

1           14. If CONFIDENTIAL or ATTORNEYS' EYE ONLY material so  
2 designated is used by a party to whom or which it has been produced or disclosed as  
3 part of a paper filed or lodged with the Court, the party using it shall take all  
4 reasonable steps to preserve the continued confidentiality of that designated  
5 CONFIDENTIAL or ATTORNEYS' EYE ONLY material, including maintaining  
6 the designation of confidentiality in all places where it is so used and requesting that  
7 it is filed or lodged with the Court under seal in accordance with C.D. Cal. Local  
8 Rule 79-5.

9           15. In general, court orders are available to the public. To the extent that a  
10 party refers to or relies upon material that is filed under seal in its pleadings, the  
11 pleadings must request that specific information be kept confidential. Absent the  
12 granting of such advance request, the Court may incorporate all evidence in its  
13 written and oral rulings.

14           16. This Order shall continue to be binding throughout and after the  
15 conclusion of this litigation, including all appeals. Within 30 days of settlement or  
16 final adjudication, including but not limited to final adjudication of any appeals or  
17 petitions for extraordinary writs, all items designated as "Confidential" or  
18 "Attorneys' Eyes Only," and all copies or summaries thereof shall be returned to the  
19 party that produced such materials or be destroyed. Whether the Confidential  
20 Material is returned or destroyed, counsel for the receiving party must submit a  
21 written certification to counsel for the designating party by the 30-day deadline that  
22 (1) identifies (by category, where appropriate) all the Confidential Material that was  
23 returned or destroyed and (2) affirms that the receiving party has not retained any  
24 copies, abstracts, compilations, summaries or any other format reproducing or  
25 capturing any of the Confidential Material. Notwithstanding this provision, counsel  
26 for the parties shall be entitled to retain their attorney work product.

27           17. If any person receiving documents covered by this Order is served with  
28 a subpoena, order, interrogatory, or document or civil investigative demand

(collectively, a “Demand”) issued in any other action, investigation, or proceeding, and such Demand seeks material that was produced or designated as Confidential Material by someone other than the receiving party, the receiving party shall give prompt written notice by hand, email or facsimile transmission within five (5) business days of receipt of such Demand to the party or non-party who produced or designated the material as Confidential Material, and shall object to the production of such materials on the grounds of the existence of this Order. The burden of opposing the enforcement of the Demand shall fall upon the party or non-party who produced or designated the material as Confidential Material. Unless the party or non-party who produced or designated the Confidential Material obtains an order directing that the Demand not be complied with, and serves such order upon the receiving party prior to production pursuant to the Demand, the receiving party shall be permitted to produce documents responsive to the Demand on the Demand response date. Compliance by the receiving party with any order directing production pursuant to the Demand of any Confidential Material shall not constitute a violation of this Order. Nothing in this Order shall be construed as authorizing a party to disobey a lawful subpoena issued in another action.

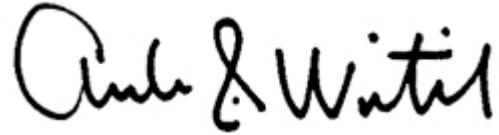
18. In the event additional parties join or intervene in this litigation, the newly joined party(ies) shall not have access to Confidential Material until its/their counsel has executed and, at the request of any party, filed with the Court the agreement of such party(ies) and such counsel to be fully bound by this Order.

19. The parties agree that nothing in this Order shall be deemed to limit the extent to which counsel for the parties may advise or represent their respective clients, conduct discovery, prepare for trial, present proof at trial, including any document herein, or oppose the production or admissibility of any information or documents which have been requested.

1           20. This Order shall remain in full force and effect until such time as it is  
2 modified, amended or rescinded by the Court.

3  
4           **IT IS SO ORDERED.**

5           Dated: September 01, 2016



6           \_\_\_\_\_  
UNITED STATES MAGISTRATE JUDGE

**STIPULATION**

IT IS HEREBY STIPULATED by and among the parties, through their respective counsel, this Honorable Court consenting, that the foregoing Stipulated Protective Order may be entered in this action.

Dated: August 25, 2016

JEFFER MANGELS BUTLER & MITCHELL LLP

By /s/  
JON A. WEININGER

Attorneys for Plaintiff  
ULTIMATE BRAND MANAGEMENT, LLC

Dated: August 26, 2016

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By /s/ Bridgette A. Agness  
Bridgette A. Agness

Attorneys for Defendant  
WAL-MART STORES, INC.

**EXHIBIT A**

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ULTIMATE BRAND  
MANAGEMENT, LLC, a Delaware  
limited liability company,

Plaintiff,

v.

WAL-MART STORES, INC., a  
Delaware corporation; and DOES 1-10,

Defendants.

Case No. 2:15-cv-10001 BRO (AJWx)

**AGREEMENT TO BE BOUND BY  
STIPULATED PROTECTIVE  
ORDER**

I, \_\_\_\_\_, declare and state that:

1. I am employed as \_\_\_\_\_ by \_\_\_\_\_.

2. I live at \_\_\_\_\_.

3. I have read the Stipulated Protective Order entered in *Ultimate Brand Management, LLC v. Wal-Mart Stores, Inc.*, Case No. 2:15-cv-10001 BRO (AJWx), and have received a copy of the Stipulated Protective Order.

4. I hereby agree to abide by the Stipulated Protective Order, subject to all penalties prescribed therein, including contempt of Court, for disobedience of said Order. I promise that the documents and information given confidential treatment under the Stipulated Protective Order entered in this case will be used by me only in connection with assisting counsel for the parties in preparing for litigation of the above-captioned matters. I understand that any use of such Confidential Material in

1 any manner contrary to the provisions of the Stipulated Protective Order will subject  
2 me to the sanctions of this Court for contempt.

3 5. Promptly upon termination of this action, I will return all Confidential  
4 Information which came into my possession, and all documents or things which I  
5 have prepared relating thereto, to counsel for the party by whom I am employed or  
6 retained.

7 6. I acknowledge that, by signing this agreement, I am subjecting myself  
8 to the jurisdiction of the United States District Court for the Central District of  
9 California with respect to enforcement of the Stipulated Protective Order.

10 I declare under penalty of perjury that the foregoing is true and correct.  
11

12 Date: \_\_\_\_\_ By: \_\_\_\_\_

13 (Signature)  
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